

To our Royal Mauian ohana:

Aloha! We hope this message finds you all well and extending our warm thoughts to those affected by the recent fires in Lahaina and Kula. Let's unite to support our neighbors in this time of need.

Quick Update:

Our Owners Group, which formed with hopes of finding a resolution to the December 2022 registration fee resolution, has now entered into arbitration with our Association. While it's regretful that we've reached this point, we remain hopeful for a harmonious and just resolution. After waiting for the Board to obtain new counsel (which it seems will not actually happen) our respective attorneys are engaged in identifying a mutually agreeable arbitrator. While we may continue to send occasional email updates such as this one, please go to our website, <https://royalmauiowners.org> for current information.

Recap on the mediation:

On **August 10th**, we learned that the Board rejected our final counter-proposal which still required the Board to immediately rescind the December 20th resolution. As concessions, we did not ask for a refund of fees previously collected or for payment of our legal expenses. We explained that the registration fee is contrary to the clear language of the Royal Mauian's governing documents and we remain confounded as to why the Board has yet to accept this reality. In fact, the governing documents are exceedingly clear as to what constitutes a "common element"—which includes the front office -- and that all expenses related to common elements, as well as all administrative expenses, can **only** be funded through maintenance fees. Therefore, the only legal way to impose a registration fee is to amend the governing documents, which requires a vote of **all** owners, not just Board members.

What's wrong with a registration fee?

- **Justification:** The proposed \$35 fee seems disproportionate to the work related to renters and lacks documentary support. In addition, streamlining processes and leveraging technology can potentially alleviate the assumed administrative burdens.
- **Efficiency & Alternatives:** The fee is subject to various taxes and introduces administrative complications making it less efficient than the existing non-taxable maintenance fees.
- **Potential Increase:** Once established, there is a risk of the fee incrementing and covering various other costs, potentially leading to unintended consequences and discord among members.

Legality:

The Board's position on the registration fees overlooks the explicit rules in our governing documents. We assert that it's crucial for the Board to adhere to these foundational rules to maintain trust and continuity within our community. When each of us purchased our condominium, we entered into a binding legal agreement, the terms of which are written into our governing documents. If the Board can simply ignore the clearly articulated rules governing our Association, why have governing documents at all? If a future board decides to further increase maintenance fees, add nightly fees, charge for the use of the rooftop garden or the swimming pool, then what's to stop them, if nobody holds them accountable for violating the rules? We have a reasonable expectation that the Board will abide by our governing documents, and when the Board ignores them, as they have here, we have a **right** if not a **duty** to correct that error.

Let's talk specifics. The Board declared the front desk is “not a common element” because 60-70% of Joanne’s time is spent assisting renters with registration fees, parking passes, and answering questions. However, the amount of use of a resource does not determine whether it is a common element or not – our governing documents (Declarations and Bylaws) do, and on this point our documents are very clear. Below is how our [Declarations](#) identify common elements:

4. Description Of Common Elements.
The common elements include:

(c) The basement, the ground floor lobby, the manager's unit and office located on the ground floor next to the ground floor lobby, the elevators and elevator shafts trash chute and trash compactor, parking area, swimming pool and its filtration plant, the lobbies next to the elevator shaft on each floor above the ground floor, janitor's closet on each floor above the ground floor, roof garden/sundeck/community recreation area, sewage disposal system, and outdoor lighting.

In addition, our [Bylaws](#) clearly state that the total amount of costs of administrative expenses is to be allocated according to each unit owner’s interest in the project:

9. Collection Of Common Expenses.
“Common expenses” shall mean all costs, expenses, fees and charges incurred by the Association of Apartment Owners, or which the Board of Directors expect the Association of Apartment Owners will incur, for the administration of the affairs of the Association of Apartment Owners and for the operation, care and maintenance of the common elements, and

fiscal year or for any prior fiscal year). The total amount of such common expenses for the next fiscal year, as approved by the Board of Directors, shall be assessed against, charged to, and as provided by law shall (together with any interest) constitute a lien upon, each unit on the first day of such fiscal year in proportion to the common interest appurtenant to each unit. The

These rules leave no room for a registration fee, the processing of which is clearly part of “the administration of the affairs of the association” and therefore a vote of all owners is needed to amend these rules if a registration fee is to be implemented. Again, why have rules at all, if the Board can simply ignore them?

Communication Matters:

Our attempts to engage in meaningful dialog have unfortunately been unmet. Transparency and open conversation are vital to understand varying perspectives and reach consensual decisions. It may be the case that the Board has received “bad legal advice” and they wholly and sincerely believe that the resolution is legally permissible and the best thing for all owners of the Royal Mauian. But if they were dealing in good faith, why wouldn't they engage with us? Why do they ignore our requests for a slot of time at the Owner's meeting to address this topic? Why do they ignore our request for a copy of their legal opinion that they say justifies their right to pass the resolution? Why won't they just talk with us as we have asked on numerous occasions, and instead force us down this path to mediation, and now, arbitration? This lack of transparency to owners is not conducive to trust, and the Board's refusal to engage with us on a human level forces us to resolve our disagreements in the legal realm.

Next Steps:

Regardless of individual opinions on the fee, adhering to our Bylaws is paramount. We hope for a return to consensual and legal paths, such as a vote by all owners on significant changes like this one.

Mahalo! 🌺

Thank you immensely for your time and consideration. Our collective love and respect for our community and island are what bind us together. Here's to hoping for more united and joyous days ahead in our little paradise!

Warm Regards,

The Royal Mauian Owners Group

<http://royalmauiowners.org>